

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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23-34 94th ST. GROCERY, CORP., KISSENA BLVD.
CONVENIENCE STORE, INC., NEW YORK
ASSOCIATION OF CONVENIENCE STORES, NEW
YORK STATE ASSOCIATION OF SERVICE
STATIONS AND REPAIR SHOPS, INC.,
LORILLARD TOBACCO COMPANY, PHILIP
MORRIS USA INC., and R.J. REYNOLDS TOBACCO
CO., INC.,

10 CV 4392 (JSR)(FM)

Plaintiffs,

- against -

NEW YORK CITY BOARD OF HEALTH, NEW
YORK CITY DEPARTMENT OF HEALTH AND
MENTAL HYGIENE, NEW YORK CITY
DEPARTMENT OF CONSUMER AFFAIRS, DR.
THOMAS FARLEY, in his official capacity as
Commissioner of the New York City Department of
Health and Mental Hygiene, and JONATHAN MINTZ,
in his official capacity as Commissioner of the New
York City Department of Consumer Affairs,

Defendants.

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**DEFENDANTS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
PURSUANT TO LOCAL CIVIL RULE 56.1**

Pursuant to Rule 56.1 of the Civil Rules of the Southern District of New York, Defendants, NEW YORK CITY BOARD OF HEALTH ("Board of Health"), NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE ("DOHMH"), NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS, DR. THOMAS FARLEY, AND JONATHAN MINTZ, by their attorney, MICHAEL A. CARDOZO, Corporation Counsel of the City of New York, submit the following statement of material facts as to which they contend there is no genuine issue to be tried:

1. On September 22, 2009, the Board of Health adopted New York City Health Code (“Health Code”) § 181.19 (the “Resolution”). See Complaint at ¶ 47.

2. The Resolution requires tobacco retailers to prominently display tobacco health warning and smoking cessation signage produced by DOHMH. See New York City Health Code § 181.19.

3. Pursuant to the Resolution, tobacco retailers must display either one “small” sign on or within three inches of each cash register or place where payment may be made or one “large sign” at each location where tobacco products are displayed. See id.

4. Pursuant to the Resolution, the “small sign” is not to exceed 144 square inches. See id.

5. Pursuant to the Resolution, the “large sign” is not to exceed 576 inches. See id.

6. Pursuant to the Resolution, DOHMH designed three signs that contain information about the adverse health effects of tobacco use, a pictorial image depicting the effects of such use, and available resources to get help to quit smoking. See id.

7. One sign contains an MRI scan of a brain damaged by a stroke; another sign has an image of a decaying tooth; and the final sign has a picture of a diseased lung. See Declaration of Dr. Thomas Farley (“Farley Dec.”) at ¶¶ 22-24.

8. All three signs contain the following language: “Quit Smoking Today. Call 311 or 1-866-NYQUITS. www.nysmokefree.com.” Id.

9. On each sign, the seal of the City of New York is located in the upper right hand corner. See id.

10. On all versions of the sign, the phrase “NYC Health” is placed in the upper right hand corner. See id.

11. On its website, plaintiff R.J. Reynolds Tobacco Co. states that “[n]o tobacco product has been shown to be safe and without risks, and quitting tobacco use significantly reduces the risk for serious diseases.” www.rjrt.com/health.aspx; Complaint at ¶ 63.

12. Plaintiff Lorillard Tobacco Company’s website states that “[a]ll cigarettes are dangerous and smoking can cause serious diseases, including lung cancer....Lorillard supports the continuing efforts of public health authorities to inform the public about the dangers of smoking.” Complaint at ¶ 63.

13. Plaintiff Philip Morris USA, Inc. states on its website that it “agrees with the overwhelming medical and scientific consensus that cigarette smoking causes lung cancer, heart disease, emphysema, and other serious diseases in smokers. Smokers are far more likely to develop serious disease, like lung cancer than non-smokers. There is no safe cigarette.” The website also states that “[t]o reduce the health effects of cigarette smoking, the best thing to do is to quit.” Id.

14. Smoking is the leading cause of preventable death in the United States and New York City. See Farley Dec. at ¶ 4.

15. Smoking causes lung cancer, tooth decay, and stroke. See id. at ¶¶ 5, 21-24.

16. In 2002, DOHMH launched a comprehensive tobacco control program. See id. at ¶ 2.

17. More than 950,000 adults and 18,000 youths continue to smoke in New York City. See id. at ¶ 7.

18. Many smokers are unaware of the health consequences associated with tobacco usage. See id. at ¶ 10.

19. The gaps in knowledge about the health risks of smoking are widest among lower socioeconomic groups. See id.

20. Smokers who are aware of the health risks of smoking are more likely to quit. See id. at ¶ 11.

21. The odds of successfully quitting smoking improve with utilization of the resources available to help smokers quit. See id. at ¶ 8.

22. Utilization of cessation resources improves with awareness of their availability. See id. at ¶ 15.

23. Free counseling and nicotine replacement therapy are available to New York City residents if they call the New York State Smokers' Quitline at 1-866-NYQUITS or access its website at www.nysmokefree.com. See id. at ¶ 8.

24. 311 is New York City's phone number for government information and non-emergency services; 311 refers smokers seeking assistance in quitting to the New York State Smokers' Quitline. See id. at ¶ 14.

Dated: New York, New York
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Respectfully submitted,

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